United States Department of Labor
Employees' Compensation Appeals Board

M.G., Appellant	)	
and	)	**Docket No. 09-2023**
	)	**Issued: June 4, 2010**
DEPARTMENT OF VETERANS AFFAIRS, POLICE SECTION, Long Beach, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 4, 2009 appellant filed an appeal of a May 5, 2009 merit decision of the Office of Workers' Compensation Programs denying his claim for compensation. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained an injury in the performance of duty on September 9, 1998, as alleged.

FACTUAL HISTORY

On September 9, 1998 appellant, then a 54-year-old police officer, filed a traumatic injury claim after the chair in which he was seated collapsed. He fell backwards and struck his head on the floor. Appellant alleged injuries to his back and shoulder blades. On the witness portion of the claim, Torry Baker, a coworker, confirmed appellant's version of the incident. The employing establishment advised that appellant did not stop work.

In a September 9, 1998 medical note from the employing establishment, a registered nurse listed the history of injury and appellant's complaints of neck, shoulder and lower back pain. X-rays revealed no evidence of fracture or dislocation. An impression of musculoskeletal pain was provided. Appellant submitted radiology reports dated September 9, 1998 of the lumbosacral, thoracic, lumbar and cervical spine together with September 16, 2003 magnetic resonance imaging (MRI) scan reports of the lumbosacral spine and bilateral orbits and September 17, 2008 MRI scan reports of the cervical and lumbar spine. The lumbar spine MRI scan of Dr. Donald B. Beamon, a Board-certified radiologist at the employing establishment, indicated in the clinical history that appellant had known lumbosacral disc narrowing and now had radiculopathy down both legs. The history advised "work-related injury at this facility." Dr. Beamon noted an impression of degenerative disc disease at L4-5 and L5-S1 and prominent facet hypertrophy and ligamentous hypertrophy at L4-5 and L5-S1. He stated that appellant had possible nerve root compromise at L5-S1.

Appellant's September 9, 1998 traumatic injury claim was filed with the employing establishment on September 10, 1998 but did not involve lost time from work. The employing establishment did not forward the claim to the Office for adjudication until appellant filed an October 28, 2008 claim for a recurrence of disability commencing in January 2003 which he attributed to the September 9, 1998 injury. Appellant retired on disability as of January 31, 2003.

In a November 7, 2008 letter, the Office advised appellant that the evidence submitted in support of his September 9, 1998 claim was insufficient as there was no diagnosis of any condition resulting from the September 9, 1998 incident or a contemporaneous physician's opinion explaining how his injury resulted in a diagnosed condition. Appellant was provided 30 days within which to submit additional evidence.

Appellant submitted a November 12, 2008 statement, a copy of an October 6, 1991 traumatic injury claim for neck pain resulting from an automobile accident, an October 13, 1991 report of emergency treatment and a letter from the Social Security Administration concerning his disability benefits. In a January 21, 2003 report, Dr. Donald Lee, an osteopath Board-certified in occupational medicine, advised that the December 3, 2002 diagnostic studies indicated appellant had degenerative disc disease at L5 and S1 and cervical spondylosis. He stated that appellant had permanent medical restrictions.

In a December 12, 2008 decision, the Office denied appellant's claim on the basis that fact of injury was not established. It found that, while the claimed incident of September 9, 1998 occurred, there was insufficient medical evidence to establish that he sustained an injury.

On December 23, 2008 appellant requested a review of the written record. No additional evidence was submitted.

On February 18, 2009 the Office requested that the employing establishment provide comments or evidence pertaining to appellant's claim. In a March 2, 2009 letter, the employing establishment noted no additional information had been sent to it by appellant.

In a May 5, 2009 decision, an Office hearing representative affirmed the denial of the claim, finding that the medical evidence did not establish an injury. The hearing representative noted that, since the September 9, 1998 claim had not been accepted, a recurrence of disability was not established.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was filed within applicable time limitation, that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.[3]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.[4] In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged.[5]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[6] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[7] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[8] Simple exposure to a workplace

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *See Irene St. John*, 50 ECAB 521 (1999); *Michael I. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 2.

[4] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

[5] *Linda S. Jackson*, 49 ECAB 486 (1998).

[6] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

[7] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[8] *Charles E. Evans*, 48 ECAB 692 (1997).

hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.[9]

ANALYSIS

The record supports and the Office accepted that on September 9, 1998 appellant fell when a chair collapsed from under him. The Board finds, however, that the medical evidence of record is insufficient to establish that the accepted employment incident caused a diagnosed medical condition.

The contemporaneous medical records from the employing establishment health unit indicate that, on the date of injury, appellant was seen by a registered nurse. However, it is well established that medical opinion evidence must be from a physician.[10] A registered nurse is not a physician as defined under the Act; therefore her opinion is of no probative medical value.[11] The record contains diagnostic studies from September 1998 but they do not contain any physician's opinion attributing a diagnosed condition to the accepted September 9, 1998 incident.[12]

There is no other medical evidence of record to establish that appellant sustained an injury caused or aggravated by the September 9, 1998 incident. In a January 21, 2003 report, Dr. Lee diagnosed degenerative disc disease at L5 and S1 and cervical spondylosis. He advised that appellant had permanent medical restrictions. Dr. Lee, however, did not address the September 9, 1998 work incident or provide any opinion as to whether the incident caused or contributed to the diagnosed degenerative disease. As the physician failed to address the causal relationship between appellant's condition and the accepted incident, the Board finds this evidence is of diminished probative value in establishing the claim.

In a September 17, 2008 MRI scan report, Dr. Beamon advised "work-related injury at this facility" and diagnosed degenerative lumbar conditions and possible nerve root compromise at L5-S1. Other than noting a history of a prior injury, he did not obtain or report any description of the September 9, 1988 work incident. To the extent that this statement constitutes an opinion on causal relationship, Dr. Beamon did not adequately address how the September 9, 1998 incident caused or aggravated the diagnosed medical conditions. The remaining medical evidence of record, such as the 2003 report of diagnostic testing, does not specifically address whether the September 9, 1998 work incident caused or aggravated diagnosed medical condition.

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[9] 20 C.F.R. § 10.303(a).

[10] *Vickey C. Randall*, 51 ECAB 357, 360 (2000); *Arnold A. Alley*, 44 ECAB 912, 921 (1993). *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[11] *Roy L. Humphrey*, 57 ECAB 238, 242 (2005); 5 U.S.C. § 8101(2) of the Act provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologist, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.

[12] *S.E.*, 60 ECAB ___ (Docket No. 08-2214, issued May 6, 2009) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

Appellant has not met his burden of proof to establish his claim. There is insufficient medical evidence to support that the 1998 work incident caused or aggravated any of his diagnosed medical conditions. Appellant was notified by the Office on November 7, 2008 that he was required to provide medical opinion evidence from a physician addressing the cause of his injury. He failed to submit sufficient medical evidence to support his claim.

Appellant asserts on appeal that his current conditions resulted from his work duties as a police officer and his various accidents. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[13] Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[14] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Thus, appellant failed to meet his burden of proof.[15]

CONCLUSION

The Board finds appellant failed to establish that he sustained an injury in the performance of duty on September 9, 1998, as alleged.[16]

[13] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[14] *Id.*

[15] As noted, appellant also submitted a claim for a recurrence of disability due to the claimed September 9, 1998 injury. However, as no September 9, 1998 injury has been accepted, it is premature to consider a recurrence of disability claim.

[16] Appellant submitted new evidence with his appeal. The Board however has no jurisdiction to review new evidence on appeal; *see* 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and request reconsideration under 5 U.S.C. § 8128.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated May 5, 2009 is affirmed.

Issued: June 4, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board